

Do You Know the Difference Between Variable and Graduated Commission Rates?

It has come to the attention of the Grievance Committee that there is a misunderstanding, and even a lack of education among many Realtors regarding the differences between Variable Rate Commissions (sometimes referred to as Dual Rate), and Graduated Rate Commissions.

Because of recent changes in required entry fields for CRIS MLS data, it is very important that Brokers, Realtors, and their staff understand these differences to avoid confusion, and to follow the CRIS rules. Listed below are the CRIS Rules and Regulations defining their meanings, and their need for disclosure.

Per the CRIS Rules and Regulations, Section 6, "Compensation," Part 6.2 (d), Dual or Variable Rate Commission Arrangements are defined as follows:

The existence of a dual or variable rate commission arrangement (i.e., one in which the seller agrees to pay a specified commission if the property is sold by the listing broker without assistance and a different commission if the sale results through the efforts of a cooperating broker; or one in which the seller agrees to pay a specified commission if the property is sold by the listing broker either with or without the assistance of a cooperating broker and a different commission if the sale results through the efforts of a seller) shall be disclosed by the listing broker in advance of their producing an offer to purchase by a indicating this within the "special compensation type field" available within the MLS. The listing broker shall, in response to inquiries from potential cooperating brokers, disclose the differential that would result in either a cooperative transaction or, alternatively, in a sale that results through the efforts of the seller. If the cooperating Broker is a buyer/tenant representative, the buyer/tenant representative must disclose such information to their client.

One example might be: A REALTOR lists a property for X% of the sales price if the property is sold with the assistance of a cooperating broker, but will charge a lesser commission of Y%, if the listing Realtor sells the property themselves. This must be indicated in the MLS as a Variable rate commission.

One example of disclosing the details of the variable rate might be the following scenario: A multiple offer exists. The listing agent has an offer, and a cooperating broker has an offer. The listing agent must disclose to the cooperating broker (upon their request) the difference in total commission the seller pays, should the listing Realtor sell the property themselves, vs. the cooperating broker selling the property. If the cooperating broker requested this information from the listing Realtor, they would be required to disclose this difference to their client as well.

Per Section 6.2 (e) Graduated Commission Arrangements are defined as follows:

One in which the seller agrees to pay a commission that increases or decreases a varying dollar amount according to the sales price according to a predetermined dollar amount. This arrangement shall be disclosed by the listing broker in advance of their producing an offer to purchase by indicating this within the special compensation type field available within the MLS.

One example might be: REALTOR lists a property for X% of first \$100,000 and Y% on the balance of the sales price over \$100,000. Recent changes in the MLS entry fields, require the entry to be specific.

Some Brokers in the past were entering this example as: X% G, to indicate that the commission was graduated (but not specifying where the break was, or for what percentage). They were assuming that the cooperating brokers would know what specific percentage was graduated. It is now required that the MLS entry be specific. An accepted entry of the above example would be: X% / Y% < 100K. There is an additional "Comments" section should be used to be even more specific.

It is important to note that a commission can be either Variable or Graduated, neither Variable or Graduated, or both Variable and Graduated. But both must be disclosed in the MLS. The two words have often been interchanged by Realtors, but as you can see, they are different and independent of each other.